

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOEL STEDMAN, on behalf of himself and  
all others similarly situated; KAREN JOYCE,  
on behalf of herself and all others similarly  
situated,

Plaintiffs,

v.

PROGRESSIVE DIRECT INSURANCE  
COMPANY, a foreign automobile insurance  
company,

Defendant.

Case No. 2:18-cv-1254 RSL

**STIPULATED PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1     2.     “CONFIDENTIAL” MATERIAL

2             “Confidential” material shall include the following information, data, documents, and  
3 tangible things, whether electronically stored or otherwise, produced or otherwise exchanged: (a)  
4 the names, acronyms, and identity of Progressive computer systems, databases, programs, and  
5 software; (b) the identity of Progressive intranet sites; (c) methods of access, usage requirements,  
6 and limitations relating to Progressive computer systems, databases, programs, software, and  
7 intranet; (d) any modifications, additions, and exclusions relating to Progressive computer  
8 systems, databases, programs, software, and intranet; (e) the identity, description, methods of  
9 access, usage requirements, and limitations relating to computer systems, databases, programs, and  
10 software used by Progressive, but provided, maintained or transmitted by third-parties; (f) the  
11 identity of any third-parties with whom Progressive works or contracts to obtain, maintain, store,  
12 or transmit information relating to job applicants and employees; (g) contracts and other  
13 confidential or proprietary information between or among Progressive and any third-party relating  
14 to computer systems, databases, programs, software, web-based applications, and its intranet; (h)  
15 data fields relating to any system, database, program, web-based application, or software  
16 maintained by Progressive or utilized by Progressive; (i) data dictionaries or record layout; (j) field  
17 or data elements; (k) explanatory codes/values; (l) explanatory tables; (m) codebooks; (n) table  
18 descriptors; (o) the location of documents on Progressive computer systems and/or intranet; (p)  
19 online/web-based manuals, (q) web-listings, (r) data, data files, or information maintained in any  
20 Progressive computer system, database, program, software or its intranet; (s) data, data files, or  
21 information that is obtained, maintained, or stored in, or transmitted by, any third-party computer  
22 system, program, software or web-based application which is used by Progressive; (t) confidential  
23 and/or proprietary business information including claims handling guidelines, forms, templates,  
24 training materials, and other similar information; and (u) any other information recognized under  
25 applicable law as confidential commercial information, trade secrets, or other information entitled  
26 to protection from dissemination outside of this litigation.

27     3.     SCOPE

1 The protections conferred by this agreement cover not only confidential material (as  
2 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
3 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
4 conversations, or presentations by parties or their counsel that might reveal confidential material.

5 However, the protections conferred by this agreement do not cover information that is in  
6 the public domain or becomes part of the public domain through trial or otherwise.

7 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

8 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
9 or produced by another party or by a non-party in connection with this case only for prosecuting,  
10 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
11 categories of persons and under the conditions described in this agreement. Confidential material  
12 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
13 that access is limited to the persons authorized under this agreement.

14 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
15 by the court or permitted in writing by the designating party, a receiving party may disclose any  
16 confidential material only to:

17 (a) the receiving party's counsel of record in this action, as well as employees  
18 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

19 (b) the officers, directors, and employees (including in-house counsel) of the  
20 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
21 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
22 designated;

23 (c) experts and consultants to whom disclosure is reasonably necessary for this  
24 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (d) the court, court personnel, and court reporters and their staff;

26 (e) copy or imaging services retained by counsel to assist in the duplication of  
27 confidential material, provided that counsel for the party retaining the copy or imaging service

1 instructs the service not to disclose any confidential material to third parties and to immediately  
2 return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is  
4 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
5 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
6 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
7 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
8 under this agreement;

9 (g) the author or recipient of a document containing the information or a  
10 custodian or other person who otherwise possessed or knew the information.

11 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
12 referencing such material in court filings, the filing party shall confer with the designating party,  
13 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
14 remove the confidential designation, whether the document can be redacted, or whether a motion  
15 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
16 designating party must identify the basis for sealing the specific confidential information at issue,  
17 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
18 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
19 the standards that will be applied when a party seeks permission from the court to file material  
20 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
21 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
22 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
23 the strong presumption of public access to the Court's files.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
26 or non-party that designates information or items for protection under this agreement must take  
27 care to limit any such designation to specific material that qualifies under the appropriate

1 standards. The designating party must designate for protection only those parts of material,  
2 documents, items, or oral or written communications that qualify, so that other portions of the  
3 material, documents, items, or communications for which protection is not warranted are not swept  
4 unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
6 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
7 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
8 and burdens on other parties) expose the designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it designated for  
10 protection do not qualify for protection, the designating party must promptly notify all other parties  
11 that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
13 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
14 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
15 be clearly so designated before or when the material is disclosed or produced.

16 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
17 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
18 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
19 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
20 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
21 markings in the margins).

22 (b) Testimony given in deposition or in other pretrial proceedings: Any party  
23 or non-party may, within fifteen days after receiving the final transcript of the deposition or other  
24 pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. Until  
25 the expiration of the fifteen-day deadline, the entire transcript shall be treated as confidential. If a  
26 party or non-party desire to protect confidential information at trial, the issue should be addressed  
27 during the pre-trial conference.

1 (c) Other tangible items and electronic documents not conducive to marking  
2 pages or portions “CONFIDENTIAL” under Section 5.2(a) or (b): the producing party must affix  
3 in a prominent place in the file name, file folder name, or exterior of the container or containers in  
4 which the information or item is stored the word “CONFIDENTIAL.” For example, if individual  
5 electronic files are not conducive because of their nature to marking “CONFIDENTIAL” by  
6 stamping pages or by affixing “CONFIDENTIAL” to their file name, the producing party may  
7 designate them by producing them within an electronic file folder marked “CONFIDENTIAL.” If  
8 only a portion or portions of the information or item warrant protection, the producing party, to  
9 the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
11 designate qualified information or items does not, standing alone, waive the designating party’s  
12 right to secure protection under this agreement for such material. Upon timely correction of a  
13 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
14 in accordance with the provisions of this agreement.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
17 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
19 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
21 original designation is disclosed.

22 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
23 regarding confidential designations without court involvement. Any motion regarding confidential  
24 designations or for a protective order must include a certification, in the motion or in a declaration  
25 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
26 affected parties in an effort to resolve the dispute without court action. The certification must list  
27

1 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
2 to-face meeting or a telephone conference.

3       6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
4 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
5 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
7 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
8 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
9 the material in question as confidential until the court rules on the challenge.

10 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
11 LITIGATION

12       If a party is served with a subpoena or a court order issued in other litigation that compels  
13 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party  
14 must:

15               (a) promptly notify the designating party in writing and include a copy of the  
16 subpoena or court order;

17               (b) promptly notify in writing the party who caused the subpoena or order to  
18 issue in the other litigation that some or all of the material covered by the subpoena or order is  
19 subject to this agreement. Such notification shall include a copy of this agreement; and

20               (c) cooperate with respect to all reasonable procedures sought to be pursued by  
21 the designating party whose confidential material may be affected.

22 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23       If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
24 material to any person or in any circumstance not authorized under this agreement, the receiving  
25 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
26 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
27 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

1 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
2 Bound” that is attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
4 MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently  
6 produced material is subject to a claim of privilege or other protection, the obligations of the  
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
8 is not intended to modify whatever procedure may be established in an e-discovery order or  
9 agreement that provides for production without prior privilege review. The parties agree to the  
10 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 10. NON-TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals, each receiving  
13 party must return all confidential material to the producing party, including all copies, extracts and  
14 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

15 Notwithstanding this provision, counsel is entitled to retain one archival copy of all  
16 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
17 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
18 product, even if such materials contain confidential material.

19 The confidentiality obligations imposed by this agreement shall remain in effect until a  
20 designating party agrees otherwise in writing or a court orders otherwise.

21  
22 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD** on this \_\_\_\_ day of  
23 January, 2019.



1	BADGLEY MULLINS TURNER PLLC	BAKER & HOSTETLER LLP
2		
3	<u>/s/ Duncan C. Turner</u>	<u>/s/ Paul G. Karlsgodt</u>
4	Duncan C. Turner, WSBA No. 20597	Paul G. Karlsgodt, WSBA No. 40311
5	Daniel A. Rogers, WSBA No. 46372	Casie D. Collignon ( <i>Pro Hac Vice</i> )
6	19929 Ballinger Way NE, Suite 200	Justin T. Winquist ( <i>Pro Hac Vice</i> )
7	Seattle, WA 98155	1801 California Street, Suite 4400
8	Telephone: 206-621-6566	Denver, CO 80202
9	Email: dturner@badgleymullins.com	Tel: (303) 861-0600
10	drogers@badgleymullins.com	Fax: (303) 861-7805
11	LAW OFFICE OF RANDALL C. JOHNSON, PLLC	E-mail: pkarlsgodt@bakerlaw.com
12		ccollignon@bakerlaw.com
13	<u>/s/ Randall C. Johnson</u>	jwinquist@bakerlaw.com
14	Randall C. Johnson, Jr., WSBA No. 24556	
15	P.O. Box 15881 Seattle, WA 98115	<u>/s/ James R. Morrison</u>
16	Telephone: 206-890-0616	James R. Morrison, WSBA No. 43043
17	Email: rcjj.law@gmail.com	999 Third Avenue, Suite 3600
18	LAW OFFICE OF DANIEL R. WHITMORE	Seattle, WA 98104-4040
19		Tel: (206) 332-1380
20	<u>/s/ Daniel R. Whitmore</u>	Fax: (206) 624-7317
21	Daniel R. Whitmore, WSBA #24012	E-mail: jmorrison@bakerlaw.com
22	2626 15th Avenue West, Suite 200	
23	Seattle, WA 98119	<i>Attorneys for Defendant</i>
24	Telephone: 206-329-8400	
25	Email: dan@whitmorelawfirm.com	
26	<i>Attorneys for Plaintiffs and Putative Class</i>	
27		

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
5 documents, including the attorney-client privilege, attorney work-product protection, or any other  
6 privilege or protection recognized by law.

7 DATED: January 25, 2019.

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9 ROBERT S. LASNIK  
10 United States District Court Judge  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on  
\_\_\_\_\_ [date] in the case of *Stedman, et al. v. Progressive Direct Insurance Company*,  
Case No. 18-cv-1254. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
any manner any information or item that is subject to this Stipulated Protective Order to any person  
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

## BADGLEY MULLINS TURNER PLLC

/s/ Duncan C. Turner

Duncan C. Turner, WSBA No. 20597  
 Daniel A. Rogers, WSBA No. 46372  
 19929 Ballinger Way NE, Suite 200  
 Seattle, WA 98155  
 Telephone: 206-621-6566  
 Email: dturner@badgleymullins.com  
 drogers@badgleymullins.com

LAW OFFICE OF RANDALL C.  
JOHNSON, PLLC/s/ Randall C. Johnson

Randall C. Johnson, Jr., WSBA No. 24556  
 P.O. Box 15881 Seattle, WA 98115  
 Telephone: 206-890-0616  
 Email: rcjj.law@gmail.com

## LAW OFFICE OF DANIEL R. WHITMORE

/s/ Daniel R. Whitmore

Daniel R. Whitmore, WSBA #24012  
 2626 15th Avenue West, Suite 200  
 Seattle, WA 98119  
 Telephone: 206-329-8400  
 Email: dan@whitmorelawfirm.com

***Attorneys for Plaintiffs and Putative Class***

## BAKER &amp; HOSTETLER LLP

/s/ Paul G. Karlsgodt

Paul G. Karlsgodt, WSBA No. 40311  
 Casie D. Collignon (*Pro Hac Vice*)  
 Justin T. Winkquist (*Pro Hac Vice*)  
 1801 California Street, Suite 4400  
 Denver, CO 80202  
 Tel: (303) 861-0600  
 Fax: (303) 861-7805  
 E-mail: pkarlsgodt@bakerlaw.com  
 ccollignon@bakerlaw.com  
 jwinkquist@bakerlaw.com

/s/ James R. Morrison

James R. Morrison, WSBA No. 43043  
 999 Third Avenue, Suite 3600  
 Seattle, WA 98104-4040  
 Tel: (206) 332-1380  
 Fax: (206) 624-7317  
 E-mail: jmorrison@bakerlaw.com

***Attorneys for Defendant***